WAR—MILITARY LAW—PRIORITY OF MILITARY COURTS OVER CIVIL COURTS.—During the present war, an American soldier killed a policeman in Kentucky and was turned over to the civil authorities. After indictment and during preparations for trial a writ of habeas corpus was requested by the father of the soldier with an intervening petition from the military authorities. *Held,* although a state court has jurisdiction, the court martial, under Article 92 of the Articles of War, Comp. Stat. 1916 § 2308*a,* has priority, and the writ should be granted. *Ex Parte King* (D. C. E. D. Ky. 1917) 246 Fed. 868.

Although the terms of Article 92 of the Articles of War make no express provision for the double jurisdiction of state and military courts over capital offenses in time of war, it was generally assumed under the similar Article 58 of the former Articles of War that this jurisdiction existed. See *Coleman* v. *Tennessee* (1878) 97 U. S. 509. It follows that although a trial and punishment by the court martial will bar a subsequent proceeding for the same offense brought in the civil courts of the same sovereignty, *Grafton* v. *United States* (1907) 206 U. S. 333, 27 Sup. Ct. 749, and will not be reviewed by civil courts except to determine jurisdiction, *Ex Parte Vallandigham* (1863) 68 U. S. 243, nevertheless, the state courts may also punish the offense against the laws of the state. See *People* v. *Gardiner* (N. Y. 1865) 6 Parker Cr. Cas. 143. But, generally, the double jurisdiction of state and federal courts, although mutually exclusive, has been so directed as to permit the court first taking jurisdiction to retain it without intervention. *Cf. Ableman* v. *Booth* (1858) 62 U. S. 506. However, this recognition of the jurisdictional rights of the court of another sovereignty is a matter of comity and will not render unconstitutional legislation giving priority to a military court over state courts. *Cf. Tennessee* v. *Davis* (1879) 100 U. S. 257. But it is submitted, in view of the well-defined hostility against military encroachment which has figured so conspicuously in our judicial history, see *Ex Parte Milligan* (1866) 71 U. S. 2; *Coleman* v. *Tennessee, supra,* that such legislation should be strictly construed and in the absence of express provision by statute no priority should be given to the military courts. Nor can the decision in the instant case be supported on the ground of a judicial recognition of a situation substantially approaching that of martial law, for the recogntion of such a situation must come from the legislative or executive authorities, and not from the courts.